IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12213 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JEBANBIBI D/O. MAHAMMAD RAHEMTULLA SINDHI

Versus

COMMISSIONER OF POLICE FOR THE CITY OF SURAT

Appearance:

MS BANNA DUTTA for MR ANIL S DAVE for Petitioner No. 1

MR KAMEN N SHUKLA for Petitioner No. 1

MR PRADEEP D BHATE, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE KSHITIJ R.VYAS

Date of decision: 23/05/2003

ORAL JUDGEMENT

The petitioner, a lady detenu, in this petition, under Article 226 of the Constitution of India, has challenged the legality of the order of her detention dated 30.11.2002 passed by the Police Commissioner, Surat City, respondent No.1 herein, under the provisions of the Gujarat Prevention of Anti Social Activities Act, 1985 (in short, 'the PASA Act').

Relying upon five Prohibition Cases registered

against the petitioner and statements of two witnesses for the alleged incidents dated 14.9.2002 and 20.10.2002, the detaining authority has recorded a finding that the petitioner is a 'Bootlegger' within the meaning of Section 2(b) of the PASA Act and with a view to preventing her from acting in any manner prejudicial to the maintenance of public order, her detention is necessary and hence the order of detention is passed.

This petition is required to be allowed on the first submission advanced on behalf of the petitioner by the learned Counsel and therefore, it is not necessary to deal with the other contentions raised in the matter. Learned Counsel submits that there is a delay in forwarding the representation by the detaining authority to the State Government and also there is a delay in considering the representation by the State Government. Hence the right of the petitioner guaranteed under Article 22(5) of the Constitution of India is infringed and therefore, the continued detention of the petitioner is illegal.

I have gone through the averments made in the petition on this aspect of the matter and the reply filed by the Police Commissioner, Surat City, respondent No.1 herein. It appears that the representation was sent by the Advocate on behalf of the detenu on 4.12.2002 to the detaining authority which was received on 7.12.2002. It appears that the order of detention came to be approved on 7.12.2002 and though the detaining authority has become functus-officio, it could not have considered the representation and ought to have forwarded the same to the State Government immediately, surprisingly, the detaining authority rejected the said representation on 9.12.2002 and the forwarded it to the State Government. It appears that the State Government received the same on 19.12.2002 and rejected it on 20.12.2002. Thus, the delay of two days, i.e. from 7.12.2002 to 9.12.2002 in forwarding the representation is not explained by the detaining authority in any manner. Apart from that, the detaining authority has not explained the delay of ten days, from 9.12.2002 to 19.12.2002 in forwarding the representation to the State Government. The office of the detaining authority could have forwarded the representation to the State Government immediately for its consideration on merits. Applying the ratio in the case of Harish Pahwa v. State of Uttar Pradesh, reported in AIR 1981 SC 1126, wherein similar delay was held to be unreasonable, vitiating the continued detention of the detenu, the delay on the part of the detaining authority in forwarding the representation of the detenu is

unreasonable and not properly explained, vitiating the continued detention of the detenu.

In the result, the petition is allowed. The impugned order of detention dated 30.11.2002 passed against the detenu is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute. Direct service is permitted.

(Kshitij R. Vyas, J.)

Sreeram.